

DOCKET FILE COPY ORIGINAL  
DOCKET FILE COPY ORIGINAL

RECEIVED

AUG 14 1998

BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

In the Matter of )  
Request For an Emergency ) CC Docket No. 94-102  
Declaratory Ruling by the State )  
of California Regarding Wireless )  
Enhanced 911 Rulemaking Proceeding )

COMMENTS OF TRUEPOSITION ON  
REQUEST FOR AN EMERGENCY DECLARATORY RULING  
REGARDING WIRELESS ENHANCED 911 RULEMAKING PROCEEDING

TruePosition, Inc. hereby submits its Comment in the above-captioned proceeding.<sup>1</sup>

I. INTRODUCTION

The State of California has petitioned the Commission for an emergency declaratory ruling seeking clarification of the Commission's Phase I E911 rules ("Petition").<sup>2</sup> The Commission refused in the E911 Memorandum Opinion and Order<sup>3</sup> to preempt

<sup>1</sup> Wireless Telecommunication Bureau Seeks Comment on Request for an Emergency Declaratory Ruling Filed Regarding Wireless Enhanced 911 Rulemaking Proceeding, CC Docket No. 94-102, Public Notice, July 30, 1998.

<sup>2</sup> Letter from the California Department of General Services, Telecommunications Division, to William Kennard, Chairman, Federal Communications Commission (July 20, 1998) (Attached to the Public Notice).

<sup>3</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Memorandum Opinion and Order, 12 FCC Rcd. 22665 (1997) ("E911 Memorandum Opinion and Order").

No. of Copies *045*  
US1AB00F

state tort law and extend the protection of limited liability to providers of wireless emergency services, including E911.<sup>4</sup> This declination, when taken together with the "cost recovery" provision of the order, has left both state governments and service providers inadequate direction as to their obligations under the Commission's rules.

According to the E911 Memorandum Opinion and Order, the Commission will examine the need for specific preemption in the future only on a case-by-case basis.<sup>5</sup> Unfortunately, questions such as those raised in California's request for a declaratory ruling will likely be raised again as states and CMRS providers wrestle with the Commission's decision not to take appropriate action to limit carriers' liability. Rather than pursuing an ambiguous and time consuming route that will force the Commission to answer these types of petitions on an ad hoc basis, the Commission should settle the issue of limited liability. The Commission should, in this proceeding, resolve this matter and establish a national standard of limited liability for wireless E911 service. Such action should create complete parity between telecommunications carriers, and prohibit the existing disparity between wireline carriers' and wireless service providers' exposure to liability for providing emergency services.

---

<sup>4</sup> Id. at ¶ 137.

<sup>5</sup> Id. at ¶ 139.

**II. THE COMMISSION SHOULD PROVIDE CMRS CARRIERS WITH THE ABILITY TO LIMIT THEIR EXPOSURE TO LIABILITY FOR THE PROVISION OF WIRELESS E911 SERVICE.**

The Commission should afford CMRS providers the same opportunity to limit their liability for the provision of E911 service as wireline carriers receive. The record in the E911 proceeding provides the Commission with various options for limiting liability for CMRS carriers.<sup>6</sup> Implementing these solutions would render moot the first two questions posed by California.<sup>7</sup> Furthermore, any or all of these solutions eliminate the necessity of revisiting similar questions in the future on a case-by-case basis.

Aside from solving the questions presented by California's request for a declaratory ruling, limiting CMRS providers' liability for the provision of mandated emergency services,

---

<sup>6</sup> See CTIA Petition for Reconsideration and Clarification of the E911 Memorandum Opinion and Order at 13. CTIA's Petition recommends the following options:

- Permit CMRS carriers to file informational E911 tariffs;
- Permit CMRS carriers to file model informational contracts pursuant to Section 211 which would be made available by the Commission to the public;
- Permit CMRS carriers to file special E911 service reports pursuant to Section 219 which would be made available by the Commission to the public for inspection.

See also Wireless Communications and Public Safety Act of 1998, H.R. 3844, 105 Cong. (requiring states grant wireless carriers the same limitations on liability that the wireline carrier in that state has).

<sup>7</sup> See Petition at 1 (The first two questions posed by the Petition assume that the Commission has not preempted state tort law with a grant of limited liability.)

including E911 service, is necessary to achieve the Commission's policy objectives. The Petition demonstrates that such action is needed given the fact that the Commission has mandated the provision of E911 service to anyone with a wireless phone.<sup>8</sup> This protection seems not only reasonable, but is necessary to ensure the continued provision of E911 service and the continued roll-out of wireless facilities.

Carriers operating in a non-regulated market consider the risks of providing a particular service in determining whether to offer it as a normal course of business. Exposure to liability is one such risk. The Commission's E911 mandate, however, foreclosed such risk calculation. Under the Commission's rules, CMRS providers may not decline service nor may they shield themselves with tariff filings<sup>9</sup> or contracts. As a direct result of the Commission's actions, however, carriers will necessarily be exposed to greater risk than they would be willing to suffer in the normal course of business. Given the Commission's mandate, and the public interest benefits associated with universal E911 service, it is incumbent upon the Commission to afford carriers traditional protections from liability concomitant with the extension of E911 carriage regulations to non-subscribers.

---

<sup>8</sup> Limited liability of course would not apply to carrier actions of gross negligence.

<sup>9</sup> The Supreme Court recently reaffirmed the right of carriers to limit their liability through tariff filings. See American Tel. & Tel. v. Cent. Office Tel., Inc., 118 S. Ct. 1956 (1998).

TruePosition has always supported the Commission's E911 policy and agrees that the provision of wireless emergency services, including E911, is in the public interest. TruePosition continues to believe that the provision of emergency wireless services and the transmission of location information is an effective tool to protect the lives of citizens nationwide. Unfortunately, denying CMRS providers the protection of limited liability works against this laudable goal. Denying limited liability, while at the same time requiring E911 service, imposes a significant, unnecessary cost on CMRS providers.<sup>10</sup>

Moreover, imposing this cost on CMRS providers is not only unreasonable in light of the regulatory mandate to provide wireless E911, but also has the effect of limiting the funds carriers have available to, among other things, expand their CMRS networks. Requiring carriers to dedicate funds to insure their liabilities may divert resources from expanding coverage areas, and may delay carriers from expeditiously installing the infrastructure necessary to support Phase I and II implementation. Limiting each carrier's ability to expand coverage will, in turn, reduce the total area covered by wireless emergency services, thus thwarting the Commission's ultimate objective of promoting access to wireless E911.

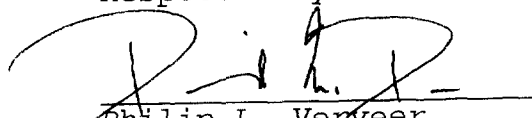
---

<sup>10</sup> See Petition at 2 (California projects that insuring the risk of liability for wireless E911 would cost \$50 million annually.)

### III. CONCLUSION

For these reasons, TruePosition respectfully requests that the Commission resolve the limited liability issue in a manner consistent with these Comments.

Respectfully submitted,



Philip L. Verveer  
David M. Don

**WILLKIE FARR & GALLAGHER**  
Three Lafayette Centre  
1155 21st Street, N.W.  
Suite 600  
Washington, D.C. 20036  
(202) 328-8000

**ATTORNEYS FOR TRUEPOSITION, INC.**

August 14, 1998